

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

WAYNE RICHARDSON,  
Plaintiff,

v.

SANDRA CARTER, *et al*,  
Defendants.

Case No. C06-5324FDB-KLS  
ORDER TO SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Magistrates Rules MJR 3 and 4, and Rule 72 of the Federal Rules of Civil Procedure. The case is before the Court upon the Court's review of the complaint. After reviewing the complaint and the balance of the record, the Court finds and orders as follows:

On June 8, 2006, plaintiff filed his complaint. On June 30, 2006, plaintiff filed a document titled: "Information Supporting Statement of Claims Specifically How each individual defendant Named in this petition violated Plaintiff [sic] Constitutional Rights" ("Information"). (Dkt. #4). Through that document, it appeared plaintiff was attempting to amend the complaint he filed on June 8, 2006, by providing additional information regarding the defendants named therein. However, because plaintiff must include all relevant information and claims in one complaint document, the Court declined to serve his complaint.

Instead, the Court informed plaintiff that if he desired to make the additional information contained in

1 the Information he filed part of his original complaint, he must do so by filing an amended complaint,  
2 consisting of one document that could be served on the named defendants, by no later than August 6, 2006.  
3 The Court further informed plaintiff that if he failed to file such an amended complaint by the above date, the  
4 Court would treat only the original complaint he filed on June 8, 2006, without reference to the Information he  
5 filed on June 30, 2006, as his complaint in this matter.

6 On July 24, 2006, plaintiff responded to the Court's order by filing a motion to disregard the  
7 Information. (Dkt. #9). Accordingly, the Court shall do so. Plaintiff's motion to disregard (Dkt. #9)  
8 hereby is GRANTED. The Court shall treat plaintiff's original complaint as his only complaint in this  
9 matter. For the reasons set forth below, however, the Court finds that complaint to be deficient.

10 A complaint is frivolous when it has no arguable basis in law or fact. Franklin v. Murphy, 745 F.2d  
11 1221, 1228 (9<sup>th</sup> Cir. 1984). When a complaint is frivolous, fails to state a claim, or contains a complete  
12 defense to the action on its face, the court may dismiss an *in forma pauperis* complaint before service of  
13 process under 28 U.S.C. § 1915(d). Noll v. Carlson, 809 F.2d 1446, 1448 (9<sup>th</sup> Cir. 1987) (*citing Franklin*  
14 *v. Murphy*, 745 F.2d 1221, 1227 (9<sup>th</sup> Cir. 1984)).

15 To state a claim under 42 U.S.C. § 1983, a complaint must allege: (i) the conduct complained of  
16 was committed by a person acting under color of state law and (ii) the conduct deprived a person of a  
17 right, privilege, or immunity secured by the Constitution or laws of the United States. Parratt v. Taylor,  
18 451 U.S. 527, 535 (1981), overruled on other grounds, Daniels v. Williams, 474 U.S. 327 (1986). Section  
19 1983 is the appropriate avenue to remedy an alleged wrong only if both of these elements are present.  
20 Haygood v. Younger, 769 F.2d 1350, 1354 (9<sup>th</sup> Cir. 1985).

21 Plaintiff also must allege facts showing how individually named defendants caused or personally  
22 participated in causing the harm alleged in the complaint. Arnold v. IBM, 637 F.2d 1350, 1355 (9<sup>th</sup> Cir.  
23 1981). A defendant cannot be held liable under 42 U.S.C. § 1983 solely on the basis of supervisory  
24 responsibility or position. Monell v. New York City Dept. of Social Services, 436 U.S. 658, 694 n.58  
25 (1978). A theory of *respondeat superior* is not sufficient to state a section 1983 claim. Padway v.  
26 Palches, 665 F.2d 965, 968 (9<sup>th</sup> Cir. 1982).

27 Plaintiff alleges in his complaint that he was subject to disciplinary action in a manner contrary to  
28 established Washington State Department of Corrections ("DOC") policy, which resulted in a demotion of  
his classification status. Along with monetary damages, plaintiff requests injunctive relief in the form of an

1 order directing DOC to adhere to all “department” rules, regulations and procedures. Complaint, p. 5.

2       However, although, plaintiff asserts in general that “defendants” violated his Fifth, Eighth and  
3 Fourteenth Amendment rights (see Id.), he fails to set forth specific facts showing how each individual  
4 defendant named in the complaint caused or personally participated in causing the harm alleged. For  
5 example, while plaintiff presents some facts regarding the events in question with respect to defendants  
6 Schneider, McTarsney and Heaward, those facts fail to show how these, or the other named defendants,  
7 caused or personally participated in the alleged violation of his constitutional rights.

8       In addition, as noted above, plaintiff has requested injunctive relief against DOC. However, under  
9 the Eleventh Amendment to the United States Constitution, a state is not subject to suit by its own citizens  
10 in federal court. Edelman v. Jordan, 415 U.S. 651, 662-63 (1974). A state agency, as an arm of the state,  
11 is immune from suit in federal court under the Eleventh Amendment as well. Howlett v. Rose, 496 U.S.  
12 356, 365 (1990); Will v. Michigan Dep’t of State Police, 491 U.S. 58, 70 (1989). An entity that has  
13 Eleventh Amendment immunity also is not a “person” within the meaning of 42 U.S.C. § 1983.<sup>1</sup> Howlett,  
14 496 U.S. at 365. Because DOC is a state agency, it is immune from liability here.

15       In addition, “[i]t is elementary that one is not bound by a judgment in personam resulting from  
16 litigation in which he is not designated as a party or to which he has not been made a party by service of  
17 process.” Radio Corp. v. Hazeltine Research, Inc., 395 U.S. 100, 110 (1969). In other words, “a court has  
18 no power to adjudicate a personal claim or obligation unless it has jurisdiction over the person of the  
19 defendant.” Id. Here, plaintiff has not named DOC as a defendant in this case. As such, the Court has no  
20 power to grant plaintiff the relief he requests to the extent that relief concerns injunctive or declaratory  
21 relief with respect to DOC. Even if the Court did have such power, however, again, as just discussed,  
22 DOC possesses Eleventh Amendment immunity here.

23       Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff shall file  
24 an amended complaint, curing, if possible, the above noted deficiencies, or show cause explaining why this  
25 matter should not be dismissed by **no later than September 14, 2006**. The amended complaint must carry  
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27       <sup>1</sup>Section 1983 reads in relevant part: “Every person who, under color of any statute, ordinance, regulation, custom, or  
28 usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States  
or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the  
Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for  
redress.” 42 U.S.C. § 1983.

1 the same case number as this one. If an amended complaint is not timely filed or if plaintiff fails to  
2 adequately address these issues, the Court will recommend dismissal of this action as frivolous pursuant to  
3 28 U.S.C. § 1915, and such dismissal will count as a “strike” under 28 U.S.C. § 1915(g).

4 Plaintiff is advised that an amended pleading operates as a *complete* substitute for an original  
5 pleading. See Ferdik v. Bonzelet, 963 F.2d 1258, 1262 (9<sup>th</sup> Cir. 1992) (citing Hal Roach Studios, Inc. v.  
6 Richard Feiner & Co., 896 F.2d 1542, 1546 (9<sup>th</sup> Cir. 1990) (as amended), *cert. denied*, 506 U.S. 915  
7 (1992)). Thus, if plaintiff chooses to file an amended complaint, the Court will not consider his original  
8 complaint.

9 The Clerk is directed to send plaintiff the appropriate forms so that he may file an amended  
10 complaint. The Clerk is further directed to send a copy of this Order and a copy of the General Order to  
11 plaintiff.

12 DATED this 14th day of August, 2006.

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16 Karen L. Strombom  
17 United States Magistrate Judge  
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